

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

GREGORY MICHAEL HERNANDEZ,)

Petitioner,)

v.)

Case No. CIV-11-1356-R

DAVID PARKER, Warden,)

Respondent.)

ORDER

Before the Court is the Report and Recommendation of United States Magistrate Judge Bana Roberts entered November 21, 2012 [Doc. No. 19]. Also before the Court is Petitioner's Objection to the Report and Recommendation. Doc. No. 20. Petitioner's Objection is largely a reiteration of the arguments made in support of his 28 U.S.C. § 2254 habeas corpus petition and considered by the Magistrate Judge. With respect to his claim for insufficiency of the evidence, however, Petitioner does acknowledge that the *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) standard is the correct standard for determining the sufficiency of the evidence, *see* Objection at p. 10, and that "any rational trier of fact *could* have found the essential elements of the crime[s] beyond a reasonable doubt," viewing the evidence in the light most favorable to the prosecution. *Id.* at p. 9.

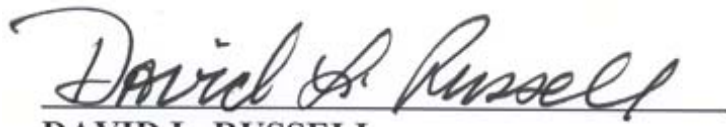
Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court reviews the Report and Recommendation of the Magistrate Judge *de novo* in light of Petitioner's objections.

Having carefully reviewed the Report and Recommendation of the Magistrate Judge in light of Petitioner's objections and the entire record, the Court fully concurs in the

findings, conclusions and recommendations of the Magistrate Judge. The Oklahoma Court of Criminal Appeals' adjudication of each of the claims that Petitioner makes in his habeas petition does not conflict with nor does it involve an unreasonable application of clearly established federal law as determined by the United States Supreme Court; no exclusion or admission of evidence rendered Petitioner's trial fundamentally unfair, resulting in a denial of due process of law; and no prosecutorial comments so infected Petitioner's trial with unfairness as to make Petitioner's conviction a denial of due process. Petitioner is not entitled to habeas relief.

Accordingly, the Report and Recommendation of the Magistrate Judge is ADOPTED in its entirety and the petition of Gregory Michael Hernandez for a writ of habeas corpus is DENIED.

IT IS SO ORDERED this 12th day of December, 2012.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE